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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 EDWARD PALACIOS, )  
11 )  
12 Petitioner, ) No C 08-2000 VRW (PR)  
13 vs. ) ORDER TO SHOW CAUSE  
14 ARNOLD SCHWARZENEGGER, et al, )  
15 Respondent(s). )  
\_\_\_\_\_ )

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17 Petitioner, a state prisoner incarcerated at the Correctional Training  
18 Facility in Soledad, California, has filed a pro se petition for a writ of habeas  
19 corpus under 28 USC § 2254 challenging the decision of the Governor of the  
20 State of California to revoke a parole date granted him by the California Board of  
21 Prison Hearings ("BPH").

22 **BACKGROUND**

23 Petitioner was convicted of second degree murder in Los Angeles County  
24 superior court. On March 21, 1986, he was sentenced to an indeterminate term of  
25 15 years to life in state prison with the possibility of parole.

26 On August 3, 2005, the BPH held a parole suitability hearing, found  
27 petitioner suitable for parole and set a parole date; however, the governor  
28 reversed the BPH's parole suitability determination and revoked the parole date.

Petitioner has unsuccessfully challenged the governor's decision in the state courts. On March 19, 2008, the Supreme Court of California denied his final petition for state habeas relief.

## **DISCUSSION**

### **A. Standard of Review**

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 USC § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id § 2243.

### **B. Legal Claims**

Petitioner seeks federal habeas corpus relief from the decision of the governor to revoke a parole date granted him by the BPH. Among other things, petitioner claims that the governor's decision is not supported by the evidence. Liberally construed, petitioner's claim appears colorable under § 2254 and merits an answer from respondent. See McQuillion v Duncan, 306 F3d 895, 902-03 (9th Cir 2002) (decision to rescind previously-granted parole release date implicated prisoner's liberty interest in release on parole which cannot be denied without adequate procedural due process protections); see also Biggs v Terhune, 334 F3d 910, 914-15 (9th Cir 2003) (refusal to set parole date for prisoner implicated prisoner's liberty interest in release on parole).

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**CONCLUSION**

For the foregoing reasons and for good cause shown,

1. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on respondent and his attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

2. Respondent shall file with the court and serve on petitioner, within 60 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within 30 days of his receipt of the answer.

SO ORDERED.

Dated: July 21, 2008



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VAUGHN R WALKER  
United States District Chief Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

EDWARD PALACIOS,  
Plaintiff,

Case Number: CV08-02000 VRW

**CERTIFICATE OF SERVICE**

v.

ARNOLD SCHWARZENEGGER et al,  
Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Edward Palacios D-27035  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960

Dated: July 21, 2008

Richard W. Wieking, Clerk  
By: Frank Justiliano, Deputy Clerk